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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JOSEPH J. HESKETH III, on his behalf
10 and on behalf of other similarly situated
persons,

11 Plaintiff,

12 v.

13 TOTAL RENAL CARE, INC., on its own
14 behalf and on behalf of other similarly
situated persons,

15 Defendants.
16

No. 2:20-cv-01733

NOTICE OF REMOVAL

17 TO: **THE CLERK AND HONORABLE JUDGES OF THE UNITED STATES**
18 **DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON**

19 Pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d),
20 1441, 1446, and 1453, Defendant Total Renal Care, Inc. ("Defendant" or "TRC") removes this
21 action to this Court from the Superior Court of the State of Washington for King County. In
22 support of this Notice, TRC respectfully states:

23 **STATE COURT ACTION**

24 1. Plaintiff Joseph J. Hesketh III ("Plaintiff") commenced this action on October 22,
25 2020, by filing a Complaint for Damages in the Superior Court of the State of Washington for
26 King County, where it was assigned Case No. 20-2-15575-6 SEA. TRC was served with the

NOTICE OF REMOVAL
(No. 2:20-cv-01733) –1

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1 Summons and Complaint on October 26, 2020. No further proceedings in this matter have been
2 held in the Superior Court for King County.

3 2. Plaintiff's Complaint alleges a single breach of contract claim and seeks related
4 damages along with prejudgment interest on any liquidated damages. Complaint ("Compl.") at
5 ¶¶ 54, 57-58.

6 **GROUND FOR REMOVAL**

7 3. This action is removeable under 28 U.S.C. § 1441 because the Court has original
8 jurisdiction under CAFA. *See* 28 U.S.C. §§ 1332(d)(2) and 1453(b) (setting procedure for
9 removing class actions).

10 4. CAFA allows defendants to remove class actions to federal court if three
11 conditions are met: "[1] there must be minimal diversity of citizenship between the parties; [2]
12 the proposed class must have at least 100 members; and [3] the aggregated amount in
13 controversy must equal or exceed ... \$5 million." *Jordan v. Nationstar Mortg. LLC*, 781 F.3d
14 1178, 1182 (9th Cir. 2015). Indeed, when passing CAFA, the Senate Judiciary Committee
15 explained, "[b]ecause interstate class actions typically involve more people, more money, and
16 more interstate commerce ramifications than any other type of lawsuit, the Committee firmly
17 believes that such cases properly belong in federal court." S. Rep. No. 109-14, at 5 (2005).

18 5. This action satisfies all three of CAFA's removal requirements.

19 **There is Minimal Diversity**

20 6. CAFA's diversity requirement is met when "any member of a class of plaintiffs is
21 a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

22 7. Plaintiff Hesketh is a citizen of, and resides in, the State of Washington. Compl.
23 ¶ 17.

1 8. Defendant TRC is incorporated under the laws of the State of California and its
2 principal place of business is in the State of Colorado. Defendant is therefore a citizen of
3 Colorado and California.¹ See 28 U.S.C. § 1332(c)(1).

4 9. CAFA’s diversity requirement is satisfied because Plaintiff and Defendant are
5 citizens of different states.

6 **There are More than One Hundred Class Members**

7 10. The proposed class includes “all non-exempt employees” who worked for
8 Defendant “on and after January 31, 2020” and “were not paid the premium pay equal to 1/2
9 times their based rates for any work performed after the declaration of emergency.” Compl. ¶ 27.

10 11. This class contains “hundreds, if not thousands of individuals.” Compl. ¶ 28.

11 12. A class of “hundreds, if not thousands” is sufficiently large to satisfy the CAFA’s
12 at least 100-member class size requirement.

13 **The Amount in Controversy Exceeds Five Million Dollars**

14 13. Plaintiff does not plead a specific amount in controversy, so Defendant need only
15 make “a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”
16 *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015) (citing *Dart Basin*
17 *Operating Co. v. Owens*, — U.S. —, 135 S.Ct. 547, 554, 190 L.Ed.2d 495 (2014)).

18 14. “[A] defendant satisfies the amount-in-controversy requirement under CAFA if it
19 is reasonably possible that it may be liable for the proffered punitive damages amount.” *Greene*
20 *v. Harley-Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir. 2020). Undisputed declarations identifying
21 an amount in controversy greater than five million dollars are sufficient to establish CAFA’s
22 amount in controversy requirement is met. See *Watkins v. Vital Pharm., Inc.*, 720 F.3d 1179,
23 1181 (9th Cir. 2013).

24
25
26 ¹ TRC’s parent company, DaVita (not named as a defendant), is incorporated under the laws of the State of
Delaware and its headquarters are located in Colorado.

1 15. Plaintiff alleges Defendant breached an agreement by failing to pay class
2 members premium pay for the regularly schedule hours worked after a national emergency was
3 declared on January 31, 2020, and seeks damages flowing from this alleged breach. Compl. ¶¶
4 13, 54, 57.

5 16. Premium pay (.5 times regular base rate) for the regular hours worked by putative
6 class members in Washington from January 31, 2020 through October 31, 2020 amounts to more
7 than \$23 million. *See* Declaration of Carol Strong (“Strong Decl.”) at ¶ 4. Premium pay (.5
8 times regular base rate) for the regular hours worked by putative class members in Washington
9 between January 31, 2020 and the change to the Disaster Relief Policy on March 31, 2020, totals
10 \$5,082,320. *Id.* at ¶ 6.

11 17. The calculations—\$23 million or \$5.08 million—satisfy CAFA’s amount in
12 controversy requirement for even just a single state and no matter which of the two time periods
13 are used.

14 **None of CAFA’s Jurisdictional Exceptions Bar Removal of This Case**

15 18. This action does not fall within any of the CAFA’s jurisdictional exceptions that
16 bar removal.

17 19. Under CAFA, federal courts must decline to exercise jurisdiction over class
18 actions where (1) more than two-thirds of the proposed plaintiff class members are citizens of the
19 state in which the action was originally filed, (2) at least one defendant is a citizen of the state in
20 which the action was originally filed, and (3) the principal injuries resulting from the alleged
21 conduct were incurred in the state where the action was originally filed. *See* 28 U.S.C. §
22 1332(d)(4)(A).

23 20. This action does not meet these requirements: Defendant TRC is not a citizen of
24 Washington state, where the action was originally filed. Compl. ¶ 18.

25 21. Finally, none of CAFA’s subject-matter exceptions to federal jurisdiction apply
26 because the Complaint does not bring claims involving securities or corporate governance. *See*

1 28 U.S.C. §§ 1332(d)(9), 1453(d) (both explaining § 1332(d)(2) does not apply to cases arising
2 under certain sections of the Securities Act of 1933, the Securities Exchange Act of 1934, or
3 state corporate governance laws).

4 **ACTION REMOVABLE AND INTRADISTRICT ASSIGNMENT**

5 22. This action is removeable to this Court under 28 U.S.C. § 1441 because this Court
6 would have had original jurisdiction over Plaintiff's claim had it been initially filed in federal
7 court. This Court is the district court of the United States for the district and division "embracing
8 the place where [the state court] action is pending," and is therefore the appropriate court for
9 removal. 28 U.S.C. § 1441(a).

10 23. TRC chooses to remove this action to the Seattle Division of this Court because,
11 as pled, Plaintiff's claims arose in King County and the action is pending there. *See* Compl. ¶ 19,
12 20; LCR 3(e)(1).

13 24. This Notice is filed with the Court within thirty days after TRC received the
14 Complaint, in accordance with 28 U.S.C. § 1446(b). *See also* 28 U.S.C. § 1453(b) (explaining
15 class actions may be removed in accordance with § 1446).

16 **PLEADINGS FILED**

17 25. Copies of all process and pleadings filed in this case and found in the files of the
18 Superior Court of the State of Washington for King County are attached to the Verification of
19 State Court Record filed with this Notice. *See* LCR 101(b).

20
21 DATED: November 23, 2020

By: s/ Chelsea Dwyer Petersen
Chelsea Dwyer Petersen #33787
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on November 23, 2020, I electronically filed the foregoing **NOTICE OF REMOVAL** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED this 23rd day of November 2020 in Seattle, Washington.

s/ Kyle Koats
Kyle Koats, Legal Practice Assistant